

REMARKS

Claims 1-17 are pending in this application. Claims 1-17 stand rejected.

Claims 1-8 and 11-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-8 of U.S. Patent No. 6,582,740 in view of *Vickers* (GB 341,760), *Froebel* (GB 2,194,125), *Dodge* (US 3,385,712) and *Zitin* (US 2,937,095).

Claims 9 and 10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1 and 2 of U.S. Patent No. 6,692,787 in view of *Vickers* (GB 341,760), *Froebel* (GB 2,194,125), *Dodge* (US 3,385,712) and *Zitin* (US 2,937,095).

Claims 1-8 and 11-17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-9 of co-pending U.S. Application No. 09/230,623 in view of *Vickers* (GB 341,760), *Froebel* (GB 2,194,125), *Dodge* (US 3,385,712) and *Zitin* (US 2,937,095).

Claims 9 and 10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claim 10 of co-pending U.S. Application No. 09/230,623 in view of *Vickers* (GB 341,760), *Froebel* (GB 2,194,125), *Dodge* (US 3,385,712) and *Zitin* (US 2,937,095).

A Terminal Disclaimer is submitted with this response. The Terminal Disclaimer disclaims the terminal part of any patent granted on the pending application extending beyond the expiration date of U.S. Patent Nos. 6,582,740 and 6,692,787 and any patent granted on co-pending U.S. Patent Application Number 09/230,623. Therefore, Applicants believe this rejection has been overcome.

Claims 1-17 stand rejected under 35 U.S.C. §103 as being unpatentable over *May* (WO 98/05219) in view of *Quaker Oats* (GB 1327351) and *Bechtel* (US 3,738,847), further in view of *Gutmann* (US 2,421,199), *Froebel* (GB 2,194,125), *Zitin* (US 2,937,095), *Dodge* (US 3,385,712) and *Vickers* (GB 341,760), and further in view of *Ohba* (EP 769252), *Henkel* (GB 1486634), *Mandanas* (WO 94/26606), *Routh* (2,344,901), *McMahon* (GB 1583351), *Erras* (EP

675046), *Hillebrand* (Australia 50797/96), *QP Corp. I* (JP 59-31677) and *QP Corp. II* (JP 61-100174).

The Patent Office relies primarily on *May* to support its obviousness rejection. As acknowledged by the Patent Office, *May*, however, fails to teach or suggest at least a canned pet food product which includes an outer, tubular phase. See Office Action dated June 3, 2003, page 2.

In addition, *May* fails to teach or suggest an outer, tubular phase which extends from the lower end to the upper end of the canned pet food product. The Patent Office appears to rely on the description in *May* on page 9, paragraph 3 to allege that *May* discloses an outer, tubular phase which extends from the lower end to the upper end of the canned pet food product. See Office Action dated November 14, 2002. A careful reading of pages 8-9 of *May*, however, reveals that the upper and base layers in *May* fail to extend from a lower end to an upper end of the canned pet food product but rather form clearly defined upper and base layers. The Patent Office refers to the spinning of the mixture of solid food pieces and gravy to form a recess that may extend "entirely through" the base layer to take on a frusto-conical shape. However, this step is performed prior to filling of the settable foodstuff which forms the upper layer of the product in *May*. *May* goes on to reinforce that "[t]he cans produced by the process contain a product which comprises a lower layer made up of solid pieces of food in a thin sauce and having a substantially conical recess and an upper layer of a substantially solid foodstuff. The layers are clear and distinct..." *May*, page 9, lines 17-20. Therefore, *May* fails to teach or suggest an outer, tubular phase which extends from the lower end of the canned pet food product to the upper end of the canned pet food product as in the claimed invention.

The Patent Office relies on sixteen other references that teach different cross-sectional shapes of products, many of which are unrelated to canned pet food, to support that it allegedly would have been obvious to use such cross-sectional shapes as a matter of choice or design. See Office Action dated November 14, 2002, page 3. Accordingly, the Patent Office relies on references that disclose a particular cross-sectional shape rather than the invention as a whole which includes an outer, tubular phase which extends from the lower end to the upper end of a canned pet food product and an inner phase which extends from the lower end to the upper end of the canned pet food product.

Of the sixteen references cited by the Patent Office, only four references relate to pet food: *Quaker Oats*, *Bechtel*, *Ohba* and *Froebel*. However, neither *Quaker Oats*, *Bechtel*, *Ohba* nor *Froebel* teach or suggest an outer, tubular phase which extends from the lower end to the upper end of a canned pet food product and an inner phase which extends from the lower end to the upper end of the canned pet food product as in the claimed invention. Consequently, the only references related to a pet food cited by the Patent Office fail to remedy the deficiencies of *May*.

Other references relied on by the Patent Office (*McMahon*, *Dodge*, the *QP Corp.* references, *Gutmann*, *Zitin* and *Vickers*) not only fail to cure the deficiencies of *May* but are culled from unrelated and non-analogous art offering no motivation to combine with *May*. The remaining references relied on by the Patent Office (*Henkel*, *Mandanas*, *Routh* and *Errass*) do not even relate to food products, let alone pet food products. To rely on such non-analogous references under 35 U.S.C. §103 is improper. See MPEP 2141.01(a).

Applicants respectfully submit that the Patent Office has relied on hindsight to select references that disclose varying cross-sectional shapes to allegedly show that the particular shape of the phase in the package of the claimed invention would have been an obvious matter of choice and/or design. One of ordinary skill in the art seeking to solve the problems solved by the present invention would not be reasonably expected or motivated to look to references cited by the Patent Office that are completely unrelated to a canned pet food product. Moreover, the references fail to cure the deficiencies of *May* including failing to teach or suggest an outer, tubular phase which extends from the lower end of the canned pet food product to the upper end of the canned pet food product as in the claimed invention.

Based on at least these reasons, Applicants believe that the claimed invention is distinguishable over the cited art. Therefore, Applicants respectfully submit that the cited art, even if combinable, fails to render obvious the claimed invention. Accordingly, Applicants respectfully request that the obviousness rejection be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of their patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

BY 

Robert M. Barrett

Reg. No. 30,142

P.O. Box 1135

Chicago, Illinois 60690-1135

Phone: (312) 807-4204

Dated: 4/4/05